A

LOW SWEE SIONG

v.

TAN SIEW SIEW & OTHER APPEALS

B

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
AZHAR MA'AH JCA
CLEMENT SKINNER JCA
[CIVIL APPEALS NO: W-02(IM)-2666-2010,
C W-02(IM)-2667-2010, W-02(IM)-2668-2010,
W-02(IM)-2669-2010, W-02(IM)-2670-2010
& W-02(IM)-2674-2010]
26 JUNE 2012

D ***CIVIL PROCEDURE:*** *Appeal - Appellate intervention - Whether justified - Whether matters material and relevant to issues before court taken into account*

CIVIL PROCEDURE: *Contempt of court - Breach of terms of court*
E *order - Procedure - Husband taking child away from wife and refusing to return child to wife in breach of custody order - Whether contempt in the face of court - Whether leave required to commence contempt proceedings*

CIVIL PROCEDURE: *Contempt of court - Breach of terms of court*
F *order - Whether party in contempt of court order should be heard by court - Husband taking child away from wife and refusing to return child to wife in breach of custody order - Whether breached and disobeyed custody order - Whether impeded course of justice - Whether husband properly prohibited from being heard in court - Rule in Wee Choo Keong v. MBf*
G *Holdings Berhad & Anor [1993] 3 CLJ 210*

FAMILY LAW: *Children - Custody - Access - Variation of court's orders on custody - Application by wife - Custody of child granted to husband by consent - Whether welfare and interest of child paramount*
H *consideration - Whether application compatible with best interest and welfare of child - Whether capable of forming and making known her own wishes*

The respondent wife ('mother') had left for England in 2003
I where she was a permanent resident. Her marriage with the appellant husband ('father') was dissolved and by a *decree nisi* dated 19 June 2006 ('the 2006 Order'), custody of their child was

given to the father with reasonable access to the mother. The primary carer of the child since 2003 was the father. In 2008 the mother applied to vary the 2006 Order to obtain custody of the child. The application was allowed ('the 2008 Order') and the mother was given custody of the child with reasonable access to the father. The father appealed against the 2008 Order. Pending the disposal of the appeal, the father refused to hand over the child to the mother. However, the father later withdrew his appeal against the 2008 Order and handed over the child to the mother. The mother later claimed that the father had on 4 September 2010 forcibly taken the child from her when she was with the child at a restaurant. The father however contended that he had met the mother and the child at the restaurant and that the child had insisted on going back with him. The following applications were filed: (i) encl. 110 – the mother's application for leave to take the child out of the jurisdiction to UK; (ii) encl. 113 – the father's *ex parte* application that he be given immediate access to the child; (iii) encl. 119 – the mother's *ex parte* application that the interim *ex parte* Order giving access to the father be set aside; and (iv) encl. 122 – the mother's application that the father hand over the child's passport and that the father's access to the child be suspended. At the hearing of the applications, the mother's counsel raised a preliminary objection that the father was in contempt of court as he had forcibly taken the child from the mother on 4 September 2010 and as such the father should not be heard until he purged his contempt. The preliminary objection was upheld by the Judicial Commissioner ('JC') on the grounds that a person in contempt could not be heard until he purged his contempt. As such, the father's counsel was ordered to leave the JC's chambers. The JC then heard the applications and allowed encls. 110, 119 and 122 whilst dismissing encl. 113. The father appealed against all of the orders made by the JC. The father had also failed to produce the child in court as ordered by the JC. The father's counsel however argued that committal proceedings could not be commenced against the father as no application for leave to commence committal proceedings had been filed. He submitted that a person alleged to be in contempt must be informed of the specific charge against him and be given an opportunity to be heard. The JC held that the father's failure to bring the child and her passport to court constituted contempt in the face of the court. After giving the father an opportunity to show cause, the JC found the father in contempt of court and imposed a fine of RM20,000, in default two months' imprisonment upon him. For

every day he continued not to hand over the child and/or the passport to the mother, she imposed an additional fine of RM400 a day until he complied with the same. The following issues arose for determination in these appeals: (i) whether the JC had erred in directing counsel acting for the father to leave her chambers and denied him from making submissions on behalf of the father; (ii) whether the JC was right in granting an order-in-terms of the mother's application in encl. 110; and (iii) whether the JC was right in finding the father guilty of contempt of court on 13 September 2010 and imposing the punishment which she did.

Held

Per Zaleha Zahari JCA (delivering the judgment of the court):

(1) The father had clearly breached and disobeyed the order of custody dated 6 August 2008 which was affirmed by the Court of Appeal on 27 July 2010, both of which, the father was fully aware of. His disobedience clearly had impeded the course of justice, in that the mother had been directed to bring the child to the court so that the JC could interview her, which the court was unable to do as the father had taken the child away on 4 September 2010, and by continuing to keep the child, and non-production of the child, made any orders the court might make on 9 September 2010 more difficult to enforce. The JC had correctly exercised her discretion in applying the general rule of law stated in *Wee Choo Keong v. MBf Holdings Berhad & Anor* that a person cannot be heard further in the same proceedings for his own benefit for non compliance of a court order; (*Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor*; refd). (paras 59 & 60)

(2) The mother's application in encl. 110 was incompatible with the best interest and welfare of the child which is the paramount consideration in any application such as this. Insufficient attention or regard was given to the wishes of the child. The court was fully aware that the child did not wish to be with her mother which must mean, that she did not wish to leave Malaysia for UK. The child has been under the care and custody of her father since 2003, and by reason thereof, had formed a strong attachment for her father and her

father's sister who had helped to care for her. The child was 11 years old and by all accounts she was capable of forming and making known her own wishes. (paras 64 & 65)

(3) An appellate court will not lightly interfere with findings of fact made by a trial court. However, in this case appellate interference was warranted as matters material and relevant to the issues before the court were not taken into account, especially the wishes of the child. When all relevant matters were taken into consideration, weighing the child's welfare as the paramount consideration, the mother's application was incompatible with the welfare of the child and should have been refused. (paras 69 & 70)

(4) The father clearly had knowledge that the court had ordered him to return the child and also hand over the child's passport to the mother on 9 September 2010 at 3.30pm that same day because his lawyer had informed him by text message as well by letter. But he obviously chose to ignore the order. The JC was clearly entitled to proceed to ask him to show cause why he should not be committed to prison or be fined for his contempt. There was no question of the father not knowing what he had to answer to as the JC had explained to him what he had done wrong. Hence, the father was properly punished for his contempt in the face of the court. (paras 72, 73 & 74)

Bahasa Malaysia *Translation Of Headnotes*

Responden isteri ('si ibu') telah meninggalkan England pada tahun 2003 di mana dia menjadi pemastautin tetap. Perkahwinannya dengan perayu suami ('si bapa') dibubarkan dan melalui satu *dekri nisi* bertarikh 19 Jun 2006 ('Perintah 2006') hak penjagaan anak mereka diberikan kepada si bapa dengan akses yang munasabah kepada si ibu. Penjaga utama anak tersebut semenjak 2003 adalah si bapa. Dalam tahun 2008, si ibu memohon untuk mengubah Perintah 2006 bagi mendapatkan hak jagaan anak tersebut. Permohonan tersebut dibenarkan ('Perintah 2008') dan si ibu diberikan hak jagaan anak tersebut dengan akses yang munasabah kepada si bapa. Si bapa merayu terhadap Perintah 2008. Sementara menunggu pelupusan rayuan tersebut, si bapa enggan menyerahkan anak tersebut kepada si ibu. Walau bagaimanapun, si bapa kemudiannya menarik balik rayuannya terhadap Perintah 2008 dan menyerahkan anak tersebut kepada si ibu. Si ibu kemudian

menyatakan bahawa si bapa telah pada 4 September 2010, mengambil anak tersebut daripadanya secara paksa semasa dia sedang bersama anak tersebut di sebuah restoran. Si bapa, walau bagaimanapun, menghujahkan bahawa dia telah bertemu dengan si ibu dan anak tersebut di restoran tersebut dan anak tersebut mendesak untuk mengikutinya pulang. Permohonan-permohonan berikut difailkan: (i) lamp. 110 – permohonan oleh si ibu untuk kebenaran membawa anak tersebut ke luar bidang kuasa ke UK; (ii) lamp. 113 – permohonan *ex parte* si bapa bahawa dia diberikan akses segera ke atas anak tersebut; (iii) lamp. 119 – permohonan *ex parte* si ibu bahawa Perintah *ex parte* interim memberikan akses kepada si bapa diketepikan; (iv) lamp. 122 – permohonan si ibu bahawa si bapa menyerahkan pasport anak dan akses si bapa terhadap anak tersebut digantung. Semasa perbicaraan permohonan-permohonan tersebut, peguam si ibu membangkitkan bantahan awalan bahawa si bapa telah menghina mahkamah kerana telah mengambil anak tersebut secara paksa daripada si ibu pada 4 September 2010 dan oleh itu si bapa tidak boleh diberi peluang untuk didengar sehingga dia membersihkan penghinaannya. Bantahan awalan tersebut dikekalkan oleh Pesuruhjaya Kehakiman ('PK') atas alasan bahawa seseorang yang melakukan penghinaan tidak boleh dibicarakan sehingga dia membersihkan penghinaan tersebut. Oleh itu peguam si bapa diperintahkan meninggalkan kamar PK. PK kemudiannya mendengar permohonan-permohonan tersebut dan membenarkan lamp. 110, 119 dan 122 sementara menolak lamp. 113. Si bapa merayu terhadap kesemua perintah yang dibuat oleh PK. Si bapa juga telah memfailkan untuk pengemukaan anak tersebut di mahkamah seperti yang diperintahkan oleh PK. Peguam si bapa walau bagaimanapun menghujahkan bahawa prosiding penghinaan tidak boleh dimulakan terhadap si bapa kerana tidak ada kebenaran untuk memulakan prosiding penghinaan yang telah difailkan. Dia menghujahkan bahawa seseorang yang didakwa menghina mesti diberitahu mengenai pertuduhan spesifik terhadapnya dan diberikan peluang untuk didengar. PK memutuskan bahawa kegagalan si bapa membawa anak tersebut dan pasport anak tersebut ke mahkamah membentuk penghinaan menentang mahkamah. Selepas memberikan si bapa peluang untuk menunjukkan sebab, PK mendapati si bapa telah menghina mahkamah dan mengenakan denda RM20,000 dan jika gagal membayar, dua bulan penjara ke atasnya. Bagi setiap hari yang dia terus gagal menyerahkan anak tersebut dan/atau passport kepada si ibu, beliau mengenakan denda tambahan RM400 sehari sehingga dia mematuhinya. Isu-isu berikut timbul untuk diputuskan

dalam rayuan-rayuan ini: (i) sama ada PK terkhilaf dalam mengarahkan peguam yang bertindak bagi si bapa meninggalkan kamarnya dan menafikan beliau peluang untuk membuat hujahan bagi pihak si bapa; (ii) sama ada PK betul dalam memberikan perintah seperti yang dipohon dalam permohonan si ibu dalam lamp. 110; dan (iii) sama ada PK betul dalam membuat dapatan bahawa si bapa bersalah atas penghinaan mahkamah pada 13 September 2010 dan mengenakan hukuman yang diberikannya.

Diputuskan:
Oleh Per Zaleha Zahari HMR (menyampaikan penghakimah mahkamah):

(1) Si bapa jelas telah melanggar dan tidak mematuhi perintah penjagaan bertarikh 6 Ogos 2008 yang disahkan oleh Mahkamah Rayuan pada 27 Julai 2010, kedua-duanya yang, si bapa menyedari sepenuhnya. Ketidakpatuhannya jelas telah menghalang perjalanan keadilan, di mana si ibu telah diperintahkan membawa anak tersebut ke mahkamah supaya PK boleh menemuduganya, tetapi mahkamah tidak boleh berbuat demikian kerana si bapa telah membawa pergi anak tersebut pada 4 September 2010, dan dengan meneruskan menyimpan anak tersebut, dan tidak mengemukakan anak tersebut, menjadikan apa-apa perintah yang mungkin dibuat oleh mahkamah pada 9 September 2010 sukar untuk dilaksanakan. PK telah dengan betul melaksanakan budi bicara beliau dalam mengaplikasi kaedah undang-undang am seperti yang dinyatakan dalam kes *Wee Choo Keong v. MBf Holdings Berhad & Anor* bahawa seseorang tidak boleh didengar selanjutnya dalam prosiding yang sama bagi faedahnya atas ketidakpatuhan perintah mahkamah (*Shamala Sathiyaseelan v. Dr Jeyaganesh C Mogarajah & Anor*; dirujuk).

(2) Permohonan si ibu dalam lamp. 110 tidak sesuai dengan kepentingan dan kebajikan anak tersebut yang merupakan pertimbangan utama dalam mana-mana permohonan seperti ini. Tidak mencukupi dengan perhatian dan pertimbangan yang diberikan kepada kehendak anak tersebut. Mahkamah menyedari sepenuhnya bahawa anak tersebut tidak ingin mengikuti ibunya yang sepatutnya bermaksud, dia tidak ingin meninggalkan negara Malaysia ke UK. Anaktersebut telah berada dalam pemeliharaan dan jagaan bapanya semenjak 2003, dan atas alasan tersebut, telah membentuk kasih sayang terhadap bapanya dan saudara perempuan bapanya yang telah

membantu menjaganya. Anak tersebut berumur 11 tahun dan pada keseluruhannya berupaya membentuk dan memberitahu kehendaknya sendiri.

(3) Sesebuah mahkamah rayuan tidak akan dengan mudah campur tangan dalam dapatan fakta yang dibuat oleh mahkamah bicara. Walau bagaimanapun, dalam kes ini, campur tangan rayuan adalah wajar kerana perkara-perkara material dan relevan kepada isu-isu di hadapan mahkamah tidak diambil kira, khususnya keinginan anak tersebut. Apabila kesemua perkara relevan telah diberikan pertimbangan, mengimbangi kebajikan anak tersebut sebagai pertimbangan utama, permohonan si ibu tidak sesuai dengan kebajikan anak tersebut dan sepatutnya ditolak.

(4) Si bapa jelas mempunyai pengetahuan bahawa mahkamah telah memerintahkan agar dia mengembalikan anak tersebut dan juga menyerahkan passport anak tersebut kepada si ibu pada 9 September 2010 pada 3.30 petang pada hari yang sama kerana peguamnya telah memberitahunya melalui pesanan ringkas dan juga melalui surat. Tetapi dia jelas memilih untuk tidak mengendahkan perintah tersebut. PK jelas berhak untuk terus memintanya menunjukkan sebab mengapa dia tidak boleh dipenjarakan atau didenda bagi penghinaannya. Tidak timbul persoalan bahawa si bapa tidak mengetahui apa yang perlu dijawab kerana PK telah menjelaskan kepadanya apa kesalahan yang dilakukannya. Dengan itu, si bapa telah dihukum dengan sewajarnya bagi penghinaan menentang mahkamah.

Case(s) referred to:

Hadkinson v. Hadkinson [1952] AC 285 ***(refd)***

Payne v. Payne [2001] 2 WLR 1826 ***(refd)***

Raja v. Van Hoogstraten [2004] EWCA Civ 968 ***(refd)***

Shamala Sathiyaseelan v. Dr. Jeyaganesh C Mogarajah & Anor [2011] 1 CLJ 568 FC ***(refd)***

Wee Choo Keong v. MBf Holdings Berhad & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***

Legislation referred to:

Law Reform (Marriage and Divorce) Act 1976, s. 88

Rules of the High Court 1980, O. 52 r. 1A

For the appellant - Sulaiman Abdullah (Pushpa Ratnam with him); M/s Hakem Arabi & Assocs
For the respondent - Absent
Amicus Curie for the child - M/s Jagjit Singh & Co
Amicus Curie for SUHAKAM - Andrew Khoo (Daniel Lo & Delta Samen with him)

[Editor's note: For the High Court judgment, please see Low Swee Siong v. Tan Siew Siew [2011] 9 CLJ 536.]

Reported by Amutha Suppayah

JUDGMENT

Zaleha Zahari JCA:

[1] In this judgment, Tan Siew Siew (the petitioner wife in the High Court and respondent in all appeals) will be referred to as "mother"; Low Swee Siong (the petitioner husband in the High Court and appellant in all appeals) will be referred as "father" whilst the child of the marriage, XXX (birth certificate no. XXX), will be referred to as "child".

[2] These six appeals emanate from the orders made on 9 September 2010 and 13 September 2010 by the learned Judicial Commissioner of the Family Division Kuala Lumpur High Court in respect of four applications, two at the instance of the mother (encl. (110) and(122)) and two at the instance of the father (encl. (113) and (119)). By consent of parties all six appeals were heard jointly as they were all inter-related.

[3] It is common ground that on the date of hearing of these appeals the mother, who is resident in England, had discharged her solicitors and had not appointed new solicitors represent her. Despite having been notified of the hearing date of these appeals by the court, as well as the appellant's solicitors, the mother had chosen not to appear nor appoint new solicitors to represent her on the hearing dates. By reason of such absence we have not had the advantage of hearing the mother's views on the issues in these appeals. Two other counsels were present, on a watching brief, for the child, and another, for SUHAKAM. The appellant's counsel had no objection to counsels holding a watching brief to address the court at the hearing of these appeals.

A **Issues For Determination**

[4] The three issues for determination in these appeals are as follows: Firstly, whether the learned Judicial Commissioner had erred in directing counsel acting for the father to leave her
B chambers and denied him from making submissions on behalf of the father at the hearing of the four applications on 9 September 2010? Secondly, whether the learned Judicial Commissioner was right in granting an order-in-terms of the mother's application in encl. (110) to take the child out of jurisdiction to the United
C Kingdom (UK)? Thirdly, whether the Judicial Commissioner was right in finding the father guilty of contempt of court on 13 September 2010 and imposing the punishment which she did?

Background

D **[5]** The background facts are these. The affidavits filed in support of and in opposition to the applications established the following facts. The mother had left for England in 2003 where she is a permanent resident and works as a manageress in a Chinese restaurant. The marriage was dissolved by consent.
E By *decree nisi* dated 19 June 2006 ("the 2006 Order"), by consent, the custody of the child was given to the father with reasonable access to the mother. The primary carer of the child since 2003 was the father, not the mother.

F **[6]** In 2008 the mother moved an application to vary the 2006 Order. The impact of the variation of the order on custody would be that the child would effectively be cut off to a large extent - almost wholly perhaps - from the parent who had taken care and control of her since the breakdown of the marriage (ie, since
G 2003), out of her homeland into a completely new environment.

[7] A different Judicial Commissioner heard the mother's application for variation of the 2006 Order. On 6 August 2008 the Judicial Commissioner allowed the application for variation of the
H order on custody of the child ("the 2008 Order"). The mother was given custody of the child with reasonable access to the father. It could be inferred that the Judicial Commissioner, in varying the 2006 Order, was aware that the variation made would not be easy on the child by the need to give the mother time to
I bond with the child. The father appealed against the 2008 Order.

[8] Pending the disposal of the father's appeal against the 2008 Order, it is not in issue that the father did not hand over the child to the mother in accordance with the 2008 Order. The child continued to be under the care and control of the father despite there being no stay of the 2008 Order.

[9] The father's appeal against the 2008 Order came up for hearing before the Court of Appeal on 27 July 2010. On this date the father withdrew his appeal. The Court of Appeal according dismissed the appeal and affirmed the 2008 Order. Consequently, the father was directed to hand over the child to the mother on 12 August 2010.

[10] On 12 August 2010, both father and child were present at the premises of the Court of Appeal for the purpose of handing over of the child to the mother. It is on record that when the child was before the Court of Appeal on 12 August 2010 she openly showed her hostility to being handed over to her mother and had expressed a strong sentiment to continue to remain under the custody care and control of her father. The child informed the Court of Appeal that her mother had taken care of her for only nine months but her father had done so for ten years. The panel members of the Court of Appeal was also sensitive to the fact that the 2008 Order would not be easy on the child. The same sentiment expressed by the Judicial Commissioner who made the 2008 Order was expressed, that the child give her mother a chance. On this date (12 August 2010) the Court of Appeal directed the father to furnish the child's birth certificate and school records to the mother within seven days (ie, by 19 August 2010).

[11] The mother then on 13 August 2010 filed encl. (110) at the High Court Kuala Lumpur, an application for leave to take the child out of the jurisdiction to UK.

[12] Three days later, on 16 August 2010, the father filed an *ex parte* application at the High Court Kuala Lumpur (encl. (113)) which application was fixed for hearing on the same date of its filing. The father alleged that the child had been taken away from the premises of the Court of Appeal on 12 August 2010 by force. It was further alleged that he had gone to the mother's address at USJ Heights and was informed by the guardhouse that the owners of that address, were looking for the child as the child had ran away. A court order was required for him to go to the said address to search for the child. The father also applied for an

order that he be given immediate access to the child, thereafter, access twice monthly from Saturday at 9am to Sunday at 7pm. In respect of the other prayers in encl. (113), his counsel, Ms Chang, requested that they be heard *inter partes* and undertook to serve the application on the mother.

[13] The Judicial Commissioner accepted the father's allegations in the affidavit filed in support of encl. (113) to be true. The child must be immediately found and her safety guaranteed. To enable her to determine what was in the best interests and welfare of the child, the Judicial Commissioner was of the view that she should interview the child to ascertain her wishes in accordance with established principles governing the court's power to make an order under s. 88 of the Law Reform (Marriage and Divorce) Act 1976. The Judicial Commissioner then issued the following interim order in respect of encl. (113): that the father be given immediate access to the child; thereafter, that he be given access every alternate Saturday from 9am to Sunday at 7pm pending the hearing of encl. (113) *inter partes* on 26 August 2010. The Judicial Commissioner also issued an order for the mother to bring the child before her to enable her to interview the child ("the interim *ex parte* order dated 16 August 2010").

[14] Two days later, on 18 August 2010, the mother filed encl. (119), also on an *ex parte* basis, for an order that the interim *ex parte* order dated 16 August 2010 be set aside, or stayed, as well as consequential orders. Enclosure (119) was also heard on the same date of its filing, 18 August 2010. The mother, in her affidavit filed in support of the encl. (119), averred that the child did not run away as alleged by the father, but was safe with her at No. 33, Jalan 2/1C, USJ Heights.

[15] Ms. YN Foo, appeared for the mother on 18 August 2010. She submitted that the father had failed to make a full disclosure in moving the court to grant the interim *ex parte* order dated 16 August 2010 in respect of encl. (113). She then highlighted the fact that the 2006 Order had been varied; that the mother had by the 2008 Order been awarded custody of the child; that the father had failed to comply with the 2008 Order for the past two years; that the father's appeal against the 2008 Order had been withdrawn on 27 July 2010 and that the Court of Appeal had affirmed the 2008 Order making the 2008 Order a final order. Ms. Foo submitted it was in the interest of the child that the 2008 Order be complied with without further delay.

[16] The court was then urged to suspend the order granting the father access to the child to enable the mother to continue bonding with the child. Concern was expressed that if the father was to be given such access, the child would not be returned to the mother. In respect of the court's decision to interview the child, Ms. Foo submitted that it was too early for the court to do so. According to her, if interviewed at this juncture, the child would in all probability choose to live with the person who had taken care of her these past years, her aunt (ie, her father's sister) or her father.

[17] The learned Judicial Commissioner was persuaded by the submissions of Ms Foo. She granted a stay of the interim *ex parte* order dated 16 August 2010 pending the *inter partes* hearing of encl. (113) and also deferred the order for her to interview the child.

[18] Another application was filed by the mother on 18 August 2010 (encl. (122)), this time for an order that the father hand over the child's passport as well as for an order that the father's access to the child be suspended until the child return to Malaysia during her school summer holidays in 2011.

[19] Enclosures (110), encl. (122), were fixed for hearing on the same date as the *inter partes* hearing of the encls. (113) and encl. (119) on 9 September 2010. Meanwhile affidavits were exchanged by the respective parties in opposing or in reply to the averments made by the other.

[20] The father's version as to what transpired on 4 September 2010 was this. On 4 September 2010 he went with two friends for breakfast in USJ 11. When he was about to go into a shop, the child and her mother came out of the shop. The child wanted to follow him. There was then a tussle between him and the mother. The child started to cry and held on to his hand and shirt. They all then went to the police station. At the police station the child in a loud voice told her mother to take her hands off her and told her to go. The child held on to his hand and went home with him. The child had informed him that she tried to run away twice during the period 12 August 2010 to 4 September 2010 when she was with her mother.

[21] On 9 September 2010, Ms. Kiran Dhaliwal appeared for the mother. She raised a preliminary objection. She submitted that the father was in contempt of court as he had forcibly taken the child from the mother on 4 September 2010 when the mother was with the child at a restaurant. She was of the view the father should not accordingly be heard until he purged his contempt.

[22] After hearing submissions of counsels, this preliminary objection was upheld by the Judicial Commissioner, that a person in contempt could not be heard until he purged his contempt. The learned Judicial Commissioner then directed counsel acting for the father to leave her chambers. Before they did so, she directed counsel to inform the father to bring the child to the court at 3.30pm that same day, for the child to be handed to the mother, failing which a warrant of arrest would be issued against the father.

[23] What transpired at 3.30pm on 9 September 2010 would be dealt with subsequently in detail in this judgment when dealing with the father's appeal in respect of the contempt proceedings and punishment imposed against him.

[24] The record shows that after counsel acting on the father left her chamber the learned Judicial Commissioner then proceeded to hear the four applications fixed for hearing that day (ie, encls. (110), (113), (119) and (122)) in the absence of the father as well as his counsel, and made the decisions which she did which are the subject of appeals before us.

The High Court Decision

Encl. (110)

[25] In making the decision which the earlier Judicial Commissioner did in varying the 2006 custody order that it was to be inferred she had taken into consideration the fact that the mother was resident in London since 2003. She was in a financial position to bring up the child and had purchased a house where she intends to live with the child. The mother's working hours were flexible and she would arrange her shifts around the child's schedule. A part-time domestic help had been engaged to take care of the child while she was at work. The child would be enrolled in Dunraven School near to where they would be living. These facts must have been within the contemplation of the Judicial Commissioner in varying the 2006 Order and in varying the custody, from the father to the mother.

[26] The Judicial Commissioner in considering encl. (110) was of the view on the facts before her that the application to take the child out of Malaysia to the UK was not motivated by a selfish desire to exclude the father from the child's life. According to the Judicial Commissioner the child would have a very good education in the UK. The resistance to go was because the child did not know what to expect what life would be like there. Given sufficient time and exposure the Judicial Commissioner was of the opinion that there was a strong possibility that the child would be happy living and schooling there. According to the Judicial Commissioner, to refuse the mother's application in encl. (110) would be to effectively deprive her of the custody of her child and an injustice to her.

[27] The Judicial Commissioner then took the view that if the father truly loved his child, he should encourage her to try out a new life in the UK. She also was of the opinion that the father's opposition to the mother's application was motivated not by a genuine concern for the child's welfare but by his own selfish need to cling on to the child despite being unable to do so personally as the care of the child was by his sister, Low Swee Toh, and her husband, Vincent Wong (a childless couple). By reason of the mother having family and property in Malaysia, and visits Malaysia regularly, the father's relationship with the child could be arranged when the child returns to Malaysia with the mother, or when he is in the UK.

[28] In the events that had transpired the Judicial Commissioner made a finding that the father was not a good role model as he had blatantly disregarded court orders and was in contempt of court.

[29] As to what transpired at a restaurant on 4 September 2010 the Judicial Commissioner accepted the mother's version of events, not the father's. She then ruled that the father had misrepresented and misled the court in moving encl. (113) for immediate access to the child on 16 August 2010. She was of the view that it was detrimental to the welfare of the child to be under the continued influence of her father who had taught her to hate her mother.

[30] The Judicial Commissioner then granted an order-in terms of the application in encl. (110). The mother was granted leave to take the child out of jurisdiction. The father was granted access to the child as follows: The mother has to bring the child back

from the UK to Malaysia at her own expense every year during the school summer holidays, or during the Christmas season, for a period of one week. The father was granted supervised access to the child at the mother's residence, or at any other agreed place. The father was also granted supervised access to the child in the UK, at his own expense, not more than four times a year, up to a maximum of not more than one week each time at any agreed place, but not overnight access. Such access was subject to the child's school schedule each access not to commence earlier than 9am and not to exceed 10.30pm. If the father proves to be trustworthy and reliable, such access would be varied and made more liberal, with no supervision.

Enclosure (113)

[31] The Judicial Commissioner was of the view the father had abused the judicial process. The father's application in encl. (113) for access and custody, care and control of the child pending a report from the Department of Social Welfare was dismissed with costs on the ground that the father had obtained the interim order dated 16 August 2010 by misrepresentation of facts by stating that the child had ran away from the mother when in fact she did not do so.

[32] In respect of prayer (2) of encl. (113), the Judicial Commissioner was of the view it was not appropriate to vary the order of custody so soon after the Court of Appeal had affirmed the 2008 Order, thus reopening the matter and defeating the court order that had been issued.

Enclosure (119)

[33] The mother's application to set aside the interim order dated 16 August 2010 granting interim access to the father was allowed by the Judicial Commissioner. The costs of the application was to be borne by the father in view of the mischief caused by him in filing encl. (113). The mother would not have filed encl. (119) if the father had not filed encl. (113).

Enclosure (122)

[34] The mother's application *vide* encl. (122) was allowed. The mother required the child's passport to take her to the UK and to Malaysia for holidays. In view of the mother being allowed to

take the child to the UK, the father's access to the child was suspended until the child returned to Malaysia during her next school holidays.

[35] On 20 September 2010 the father filed notice of appeals against all of the orders made by the Judicial Commissioner on 9 September 2010 in respect encls. (110), (113), (119) and (122)), ie, Appeal No. W-02(IM)-2666-2010, W-02(IM)-2667-2010 and W-02(IM)-2668-2010 respectively.

The Contempt Proceedings

[36] The events leading to the institution of contempt proceedings against the father are as follows. When the court resumed proceedings at 3pm on 9 September 2010, Ms KL Chang, counsel for the father, was present, but the child and the father, were absent. The court was informed by Ms Chang that the father had been notified of the orders issued by the court earlier on that morning by way of text message, as well as by letter sent by fax, and that there was no response.

[37] At 3.45pm Ms Chang appealed for the court to grant the father more time to comply with the court's orders issued earlier on that morning, ie, to surrender the child and the child's passport to the mother. The court acceded to the request. The matter was then adjourned to 13 September 2010 at 11.30am.

[38] On 13 September 2010 at 11.30am the father was present represented by new counsel, Mr Ravi Nekoo and Ms Pushpa Ratnam of Messrs Hakem Arabi & Associates. The child was not present. The child's passport was not produced.

[39] Mr Ravi informed the court he had filed two applications that morning, ie, encls. (144) and (145), which applications had yet to be processed. Mr Ravi submitted that committal proceedings cannot be commenced against the father as no application for leave to commence committal proceedings had been filed. He was of the view, unless the court invoked O. 52 r. 1A of the Rules of the High Court 1980 ("the RHC"), contempt in the face of the court, the other rules of O. 52 of the RHC had to be complied. He further submitted that a person alleged to be in contempt must be informed of the specific charge against him and be given an opportunity to be heard. As no charge had been framed against the father, and the father had not been accorded an opportunity to defend himself, he urged the court to review the

orders made in the absence of the father and his counsel on 9 September 2010 in respect of the four applications fixed for hearing that day.

[40] The Judicial Commissioner in her judgment stated that when she heard the four applications fixed for hearing on 9 September 2010, after hearing counsel on Ms Kiran's preliminary objection, at that point in time, committal proceedings had not been commenced against the father. She had only ordered the father to hand over the child and the passport at 3.30pm that same day (9 September 2010). Be that as it may, the father was not allowed to be heard at the hearing of the four applications before her by reason of him not having complied with a valid subsisting custody order.

[41] The learned Judicial Commissioner then gave the father an opportunity to explain on oath to why he did not produce the child and the child's passport as directed by the court that day.

[42] The father stated he did not attend court on 9 September 2010 on the advise of his lawyers. As for the non-production of the child, he informed the court that the child cried and refused to come to court because she was afraid. On the last occasion when she attended court on 12 August 2010, after the case, she was bundled into a car by seven or eight persons and taken away from the Court of Appeal premises. As for the child's passport, the father stated that on 9 September 2010 he was at his home in USJ with the child, trying to persuade her to come to court. As a result, he did not have time to go to his mother's home to collect the child's passport.

[43] The record shows that the father was then informed that by reason of the 2008 Order, having been affirmed by the Court of Appeal, he must comply with the 2008 Order. That if he continued to keep the child, and not surrender the child to the mother, he would be considered to be in contempt of court.

[44] The learned Judicial Commissioner took the position that the father's failure to bring the child and her passport to court that day (13 September 2010) constitutes contempt in the face of the court. The learned Judicial Commissioner then asked the father to show cause why he should not be committed to prison or be fined for contempt of court.

[45] The father gave the same explanation which he had given to the court earlier. That he tried his best to convince and persuade the child to come to court, that she refused because it means that she cannot see him or his family members and repeated the reason why he did not produce the child's passport.

[46] The Judicial Commissioner then heard submissions of counsels. Ms Kiran submitted that from the father's evidence he only respected the child's wishes and did nothing to bring the child to court. As for the non-production the passport, Ms. Kiran submitted that the order was given on 9 September 2010, but it was 13 September 2010 that day. The father had ample time to get the passport had he wanted to but chose not to do so.

[47] In response, Mr. Ravi asked for leniency since the father had tried his best to bring the child to the court. He submitted that the father never intended to disobey the court orders. He also stated that it was unfortunate that the court could not interview the child.

[48] The Judicial Commissioner was not satisfied with the father's explanation. In her judgment she stated he was unable, as a father, to exercise parental supervision, to bring the child to court in compliance with the court order. He made no effort to bring the child's passport to court even though he was ordered to do so. From 9 September 2010 to 13 September 2010, he had more than enough time to collect the passport from his mother's house (if indeed the passport was there). The Judicial Commissioner considered it unbelievable that the father should, at that critical time, be conveniently keeping the passport with his mother when he had no legal right to keep it. The Judicial Commissioner was convinced that the father was not sincere and had no intention of handing over the child, or the passport, to the mother. That he had taken the law into his own hands when he took the child away on 4 September 2010 totally disregarding the 2008 Order which was affirmed by the Court of Appeal on 27 July 2010 and 12 August 2010. The father had also not shown any remorse over what he had done. He had also not tendered an apology to the court. By reason of non-production of the child, the question of the court interviewing the child, if that was what learned counsel for the father was suggesting, was rendered impossible by the father's own acts of contempt of court.

[49] By reason of this being the third opportunity given for the father to comply with the court orders, his failure to do so, and not purging his contempt, the Judicial Commissioner made a finding that the father was in contempt of court. She then imposed a fine of RM20,000, in default two months' imprisonment upon him. For every day he continued not to hand over the child and/or the passport to the mother, she imposed an additional fine of RM400 a day until he complied with the same. A fine was imposed instead of committing the father to prison with the hope that he would be contrite and remorseful over his actions and do his utmost to hand over the child and the child's passport as soon as possible to the mother. The additional fine of RM400 per day was not intended to be an open-ended penalty to continue indefinitely. Upon the application by the mother, or at the court's own instance, the father can be called upon to pay all outstanding fines, and the punishment of the additional fine of RM400 can be substituted with an immediate and deterrent custodial sentence.

[50] The Judicial Commissioner subsequently dismissed an oral application by counsel for the father for stay of the punishment imposed for contempt. She was of the view that the father did not have any respect for the law, or the court. The father was fully aware of the fact that he was breaching court orders. The rule of law must be upheld.

[51] The father's appeal against this order is the subject matter of Appeal No. W-02(IM)-2669-2010 and W-02(IM)-2670-2010 respectively. The father has also filed a general appeal against all orders made by the Judicial Commissioner on 9 September 2010 and 13 September 2010, ie, Appeal No. W-02(IM)-2674-2010.

Decision

[52] On the date of the hearing of these appeals on 22 March 2011 we were informed that the father had paid the fine of RM20,000 and is paying RM400 a day since the issuance of that order. In exercise of our discretion, upon the oral application of the appellant's counsel, we granted a stay of the RM400 per day fine pending the disposal of these appeals.

[53] First issue: Whether the father should have been heard on 9 September 2010?

[54] The father complains that it was wrong for the Judicial Commissioner to exclude him from being heard in the morning on 9 September 2010 on the ground of contempt since, at that stage, no leave was granted to bring committal proceedings, and no charge had been framed against him.

[55] We find no merit in this contention for the following reasons. The decision of the Supreme Court in *Wee Choo Keong v. MBf Holdings Berhad & Anor And Another Appeal* [1993] 3 CLJ 210, establishes that a court has a discretion to apply the general rule of law that a person cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt. In *Wee Choo Keong* the Supreme Court approved the *dicta* in *Hadkinson v. Hadkinson* [1952] AC 285 at p. 293 where Denning LJ said that, while it is a strong thing for a court to refuse to hear a party to a cause, and the fact that a party has disobeyed an order of court is not of itself a bar to being heard, the court has a discretion to do so for grave considerations of public policy which the court will exercise if the disobedience is such that, so long as it continues, it impedes the course of justice by making it more difficult for the court to ascertain the truth or to enforce the order which it may make.

[56] In *Shamala Sathiyaseelan v. Dr. Jeyaganesh C Mogarajah & Anor* [2011] 1 CLJ 568 the Federal Court had to decide as a preliminary issue whether it should proceed to hear five questions of law referred to it by the Court of Appeal despite the fact that the appellant wife there, in breach of an order for joint custody granted to the husband and wife of two children of the marriage, had left Malaysia with the children and continued to remain out of the jurisdiction despite the husband obtaining leave to bring committal proceedings against her and obtaining an order that she should return the children to Malaysia. The Federal Court held that the wife was clearly in breach of the court orders and that until the two children were brought back, the court should decline to proceed with the reference. The reference was then struck out. In other words the court was not prepared to hear the wife in appeal until she purged her contempt.

[57] The decision in *Shamala Sathiyaseelan v. Dr Jeyaganesh* is relevant in these proceedings for two other reasons: (a) In that case it was argued that *Wee Choo Keong* was wrongly decided as the Supreme Court had taken a rigid position when saying that a person in contempt could not be heard, but Richard Malanjum CJ

(Sabah & Sarawak) held, after a careful reading of the judgment in *Wee Choo Keong* that the Supreme Court had not taken a rigid position as alleged, but had in fact preferred the approach that "it is a matter of discretion depending on the circumstances of the case whether or not a litigant ought to be heard notwithstanding his contempt". The learned Chief Judge (Sabah & Sarawak) further held that the decision in *Wee Choo Keong* was in line with the modern formulation of the discretionary test first propounded by Denning LJ in *Hadkinson v. Hadkinson* and later refined in cases such as *Raja v. Van Hoogstraten* [2004] EWCA Civ 968.

[58] The other reason was, the Federal Court was well aware that at that stage, there was no finding as yet that the wife was "guilty" of contempt (which is not unlike the argument of the father here, that he has not been charged and found guilty of contempt yet) but the Federal Court held that per Arifin Zakaria CJ (Malaya) at p. 575, judging from her conduct, since it was apparent that as the wife had no intention of complying with the orders of the court, the court should decline to proceed with the reference.

[59] Reverting to the facts here, we find that the learned Judicial Commissioner had correctly exercised her discretion against allowing the father to be heard. The father had clearly breached and disobeyed the order of custody dated 6 August 2008 which was affirmed by the Court of Appeal on 27 July 2010, both of which, the father was fully aware of. His disobedience clearly had impeded the course of justice, in that the mother had been directed to bring the child to court so that the Judicial Commissioner could interview her, which the court was unable to do as the father had taken the child away on 4 September 2010, and by continuing to keep the child, and non-production of the child, made any orders the court may make on 9 September 2010 more difficult to enforce.

[60] We find that the learned Judicial Commissioner had correctly exercised her discretion in applying the general rule of law stated in *Wee Choo Keong* that a person cannot be heard further in the same proceedings for his own benefit for non compliance of a court order.

[61] With regard to the question whether the Judicial Commissioner was right in allowing encl. (110) in granting leave to take the child out of jurisdiction, it is settled law that in applications such as this, the paramount consideration is, what is in the best interests and welfare of the child?

[62] In arriving at her decision to allow the child to leave for UK the learned Judicial Commissioner had adopted the approach recommended by the English Court of Appeal in *Payne v. Payne* [2001] 2 WLR 1826. In that case it was held that whenever a court is faced with the difficult and vexed question of whether a child should be taken out of the jurisdiction when a marriage breaks up and a situation arises where the child of that marriage, instead of being in the joint custody of both parents is given to the custody of one parent or primary carer who decides to relocate or leave the jurisdiction of the court, the principles to be applied and the questions a court should ask itself in such cases are these:

> A review of the decisions of this court over the course of the last 30 years demonstrates that relocation cases have been consistently decided upon the application of the following two propositions: (a) the welfare of the child is the paramount consideration; and (b) refusing the primary carer's reasonable proposals for the relocation of her family life is likely to impact detrimentally on the welfare of her dependant children. Therefore her application to relocate will be granted unless the Court concludes that it is incompatible with the welfare of the child.

[63] Directing herself along the lines suggested in *Payne v. Payne* the learned Judicial Commissioner found (i) that the mother's application to take the child out of Malaysia was genuine and not motivated by any selfish desire to exclude the father from the child's life, in that, all she desired was to return to the UK where she now works and lives, with her child, whereas the father was selfishly clinging onto the child instead of encouraging the child to go try out a new life in the UK; (ii) the mother's application was realistic, in that, she intends to enrol the child in a school close to her home and it should not be too difficult for the child to adjust to living and schooling in the UK where she will receive a good education; (iii) allowing the child to leave Malaysia would not have a detrimental impact on the father as he has left the care of the child to his sister and her husband – therefore since the child will return to Malaysia for visits, the father can see her then or when he goes to the UK; (iv) the refusal of the mother's

application would be a real injustice to her as it would effectively deprive her of the custody of the child which cannot be in the best interest and welfare of the child; (v) the mother will be able to provide a good home and devote sufficient attention and care to the child in UK where the mother has a house, a part-time domestic helper and can arrange her work hours to suit the child's schedule, whereas the father has changed his residence three times since 2008, has not provided evidence of his earnings or employment and the child has changed schools four times in five years; (vii) according to a psychologist's report obtained by the mother, the child has not had a stable and loving environment; (viii) the father was not a good role model for the child judging from the way he disregards the court orders and it would be detrimental to the welfare of the child if she is under the continued influence of the father who has taught her to hate her mother.

[64] Having given the decision of the learned Judicial Commissioner our most anxious consideration we are of the considered view that the mother's application was incompatible with the best interest and welfare of the child which is the paramount consideration in any application such as this. In our judgment insufficient attention or regard was given to the wishes of the child. It is unfortunate that the learned Judicial Commissioner was not able to interview the child, but the child had made her wishes known and the court was fully aware that the child did not wish to be with her mother which must mean, that she did not wish to leave Malaysia for UK. This sentiment was understandable as the child has been under the care and custody of her father since 2003, and by reason thereof, had formed a strong attachment for her father and her father's sister who has helped to care for her.

[65] The child here is no longer of tender years. She is now 11 years old and attending standard six. By all accounts she is capable of forming and making known her own wishes on matters, as demonstrated when the Court of Appeal gave her its advice. In the light of the child's known wishes and views, although the mother's application was not motivated by some selfish desire to exclude the father from the child's life, is the mother's application realistic?

[66] In our judgment it is not for the following reasons. The child has firmly set her mind against her mother and being with her in UK. Although the mother complains that the child's mind

has been poisoned towards her, the reality of the situation was that the mother had left for UK way back in 2003, and was content to leave the child with the father and his family to care for her. Despite all the negative things that the mother has said about the father it is an undeniable fact that the child had formed a close bond and attachment to him and his sister. The child is now happily going to school here and her friends are here. She was born here and has been brought up to the way of life here. Is it practical and in her best welfare that the child should be removed from Malaysia? We find not. Taking the child out of Malaysia would mean cutting her off from her homeland and placing her in a new environment and also cutting her off from the parent and family who had taken care of her since the breakdown of the marriage. To tear the child away and put her in a completely new environment to which she is not accustomed to, was not, in these circumstances, realistic. Further, this is not a case where the mother, having left the child with the father, had returned for the child's sake to take the child to UK because the child is being mistreated or the child's welfare is in jeopardy because of the father.

[67] The next question we asked ourselves was, whether a refusal of the mother's application is likely to impact detrimentally on the welfare of the child? In our view it would not. It is said that the child would receive a good education in UK. So too here. As far as housing and personal comfort of the child is concerned, we see very little difference between what the child would enjoy in UK and what she was already enjoying and used to here. With regard to the mother's concern about the father's earnings and employment record and not being a good role model for the child, these matters did not seem to disturb the mother when she left for UK and had agreed to let the father have custody of the child when the marriage was dissolved.

[68] Of course in considering the mother's application, the court was entitled to take into account, as the learned Judicial Commissioner did, the reasonable wishes of the mother and her plans and efforts for the child in UK, as well as the negative impact on her of not being able to take the child to UK when she is the person to whom custody had recently been granted, but in the final analysis the mother's needs and wishes must yield to the best interest of the child and the child's wishes.

[69] We are aware that an appellate court will not lightly interfere with findings of fact made by a trial court. However we feel that in this case appellate interference is warranted as the matters we have mentioned were in our view material and relevant to the issues before the court but were not taken into account, especially the wishes of the child.

[70] In our judgment when all relevant matters are taken into consideration, weighing the child's welfare as the paramount consideration, we find the mother's application to be incompatible with the welfare of the child and should have been refused.

[71] On the father's complaint that leave to commence committal proceedings had not been obtained, no charge had been framed, he did not know what he had to show cause against, and no orders with a penal endorsement had been served on him in relation to the orders made on 9 September 2010, and that it was wrong for the Judicial Commissioner to impose the fine of RM20,000 and a further RM400 a day upon him till he purged his contempt, we are of the following view.

[72] We find no merit in the father's complaint. The father clearly had knowledge that the court had ordered him to return the child and also hand over the child's passport to the mother on 9 September 2010 at 3.30pm that same day because his lawyer had informed him by text message as well by letter. But he obviously chose to ignore the order. When he failed to do so at 3.45pm he was clearly in contempt of court. Then, on the adjourned date, 13 September 2010, the father appeared before the learned Judicial Commissioner without the child and the child's passport. The record shows that the court had explained to him that because he had withdrawn his appeal against the 2008 Order and the Court of Appeal had affirmed that order, it would be wrong for him to continue to keep the child.

[73] In these circumstances we are of the view that the learned Judicial Commissioner was clearly entitled to proceed to ask him to show cause why he should not be committed to prison or be fined for his contempt. There was no question of the father not knowing what he had to answer to as the learned Judicial Commissioner had explained what he had done wrong on 13 September 2010 at 11.30am that day.

[74] We accordingly find that the father was properly punished for his contempt in the face of the court on 13 September 2010.

Conclusion

[75] In view of the findings that we have arrived at on the issues pertinent in these six appeals, the orders made in respect of the respective appeals before us are as follows:

1. Appeal W-02(IM)-2666-2010

   The appeal against of decision of Judicial Commissioner in encl. (110), is allowed with costs here and below. The orders in respect of prayers (a) and (b) allowing the mother to take the child out of the jurisdiction as well as the orders regarding the father's access is set aside.

2. Appeal W-02(IM)-2667-2010

   (a) Enclosure (113)

   In respect of the order made in respect of encl. (113), in view of our decision in allowing the appeal in respect of the Judicial Commissioner's decision in encl. (110), the father's appeal in respect of the Judicial Commissioner's decision relating to encl. (113) is allowed in part in respect of prayers 1 and 2.

   In the course of hearing of these appeals, we were informed that the father has applied to vary the order for custody made on 6 August 2008 and that this application is now pending hearing before the High Court. Pending the final determination of that application, we grant the father full time access and a stay of the order of custody dated 6 August 2008 of the child. All other orders applied for in encl. (113) are dismissed. There will be no order as to costs here and below in respect of this appeal.

   (b) Enclosure (119)

   In respect of the Judicial Commissioner's decision in respect of the mother's application in encl. (119), ie, to set aside the *ex parte* order in respect of encl. (113), in view of our decision in respect of the father's appeal in respect of encl. (113), we allow this appeal, and set aside the order of the High Court in respect of encl. (119) with no order as to costs here and below.

A 3. Appeal No. W-02(IM)-2668-2010

In respect of the appeal against the Judicial Commissioner's decision in encl. (122), the mother's application for the child's passport and to vary the order of access to the father, consequent upon our decision to allow the father's appeal in W-02(IM)-2666-2010 and setting aside the order granting leave to take the child out of jurisdiction, we allow this appeal with costs here and below. Orders 1 and 2 made by the learned Judicial Commissioner is accordingly set aside.

C 4. (a) Appeal No. W-02(IM)-2669-2010

In respect of the appeal against the order of committal and the fine imposed upon the father, we dismiss this appeal. However in view of our order granting the father full time access and stay of the custody order dated 6 August 2008 pending the determination of his application to vary the order dated 6 August 2008, the fine imposed on him of RM400 per day ceases to be payable effective from our decision to stay that order on 22 March 2011.

(b) The appeal against the order of refusal to hear the father on 9 September 2010 was also dismissed.

5. Appeal No. W-02(IM)-2670-2010

In respect of this appeal against the application by the father for stay of all orders made by the Judicial Commissioner on 9 September 2010, we make no order in respect of this appeal.

6. Appeal No. W-02(IM)-2674-2010

In respect of this general appeal against all of the six orders made by the Judicial Commissioner on 9 September 2010 and 13 September 2010, we make no order in respect of this appeal.

H **[76]** Parties are at liberty to apply.

I